IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 10418 of 2006(M)

PETITIONER:

SHERLY VIJAY VARGHESE,
THONDUTHARAYIL HOUSE, THEKKEMALA P.O.,
KOZHENCHERRY, NOW RESIDING AT KALLILI BUILDING,
POST BOX 3817, RUWI, MUSCAT, REPRESENTED
BY HER POWER OF ATTORNEY HOLDER, MR.ABRAHAM
VARUGHESE,THONDUTHARAYIL(H),THEKKEMALA,KOZHENCHERY

BY ADV. SRI.ARUN.B.VARGHESE

RESPONDENTS:
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1. THE GENERAL MANAGER,
BHARAT SANCHAR NIGAM LTD., TELECOM DISTRICT,
THIRUVALLA.

2. THE ACCOUNTS OFFICER (TR-W),
TELEPHONE REVENUE, OFFICE OF THE GENERAL
MANAGER, B.S.N.L., TELECOM DISTRICT,
THIRUVALLA.

BY ADV. SRI.C.S.RAMANATHAN, SC, BSNL FOR R1 AND R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.10418/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE PHONE BILL FOR THE PERIOD FROM 1.10.2004 TO 30.11.2004.

EXT.P2: TRUE COPY OF DETAILED BILL DATED 7.12.04.

EXT.P3: TRUE COPY OF COMMUNICATION NO.TRA/TLA/101-02/KOZ-2212664/DATED 17.1.05.

EXT.P4: TRUE COPY OF THE COMMUNICATION NO.TRA/TLA/DEF./KOZ 2212664/34 DATED 18.3.05 ISSUED BY 2ND RESPONDENT.

EXT.P5: TRUE COPY OF THE PAPER REPORT DATED 5.12.2005 PUBLISHED IN INDIAN EXPRESS DAILY.

EXT.P6: TRUE COPY OF THE JUDGMENT DATED 30.6.05 IN WPC NO.12342/05.

EXT.P7: TRUE COPY OF THE COMMUNICATION NO.DET CVU/ARB/KOZ-2212664/4 DATED 22.12.05 ISSUED BY THE ARBITRATOR.

EXT.P8: TRUE COPY OF THE CLAIMS TATEMENT DATED 6.1.06 SUBMITTED BY THE PETITIONER.

EXT.P9: TRUE COPY OF WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS BEFORE THE ARBITRATOR.

EXT.P10: TRUE COPY OF THE ARBITRATION AWARD NO.DET CVU/ARB/KOZ/2212664/25 DATED 22.3.2006.

EXHIBITS OF R2

EXT.R2(A): COPY OF THE RECORD REGARDING THE DETAILS PRODUCED BEFORE ARBITRATOR.

EXT.R2(B): COPY OF THE RECORD SHOWING THAT THE PETITIONER WAS PROVIDED WITH A DYNAMIC LOCKING SYSTEM.

EXT.R2(C): COPY OF THE DETAILS REGARDING THE CALLS MADE DURING THE DISPUTED PERIOD WHICH WAS PRODUCED BEFORE THE ARBITRATOR.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 10418 OF 2006
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Dated this the 11th day of September, 2007

J U D G M E N T

The dispute between the petitioner and the BSNL was subject matter of arbitration and that resulted in Ext.P10 award against the petitioner. By the award, the Arbitrator held that for the deficiency in service, a reduction of Rs.5,000/- should be given and accordingly the balance due from the petitioner has been quantified at Rs.26,343/-. It is submitted that in terms of the interim order dated 28.4.06, the petitioner has remitted Rs.5,000/- and therefore the balance left is only Rs.21,343/-.

2. Impugning the award of the Arbitrator, the learned counsel for the writ petitioner would content that, the bill in question is for the period 1/10/04 to 30/11/04, when Rs.38,843/- was demanded. According to him, for the period prior to and subsequent thereto, the billing always

was in the range of Rs.1500 to Rs.2000. Learned counsel would submit that it is only on account of either the defect in the system or pilferage of calls that such huge amount came to be charged. He would submit that the calls were not made from the telephone and therefore, the finding of the Arbitrator to the contrary, cannot be sustained. It is submitted that the department did not follow the procedure as laid down in the guidelines and therefore, for that reason also, the award cannot be sustained.

3. As regards the question whether the calls in fact originated from the telephone of the petitioner, the Arbitrator has come to a finding against the petitioner with reference to the documents. The entire finding of fact in this respect is against the petitioner. Having gone through the award, I am not in a position to say that the finding of the Arbitrator is perverse, or vitiated any ground that is available for invoking judicial review. In so far as the allegation of non compliance with the guidelines is

concerned, as rightly contended by the learned counsel for the respondents, compliance with the guideline arises only when a complaint has been made prior to the issue of the impugned bill. In this case, no such complaint has been made. Even according to the petitioner, complaint was made only after the bill was received from the Department. Therefore there is no occasion for the department to have complied with the guidelines. Facts being so, the judgment in the case of **Mohan Dasa Prabhu v. Union of India (2005(1) KLT 933)** relied on by the petitioner is also inapplicable to the facts of the case.

4. Thus, I do not find any ground to interfere with the impugned award. The amount that is now payable by the petitioner is Rs.21,343/- and this amount is to be paid by him. Counsel pleads that in view of the petitioner's financial constraints, it will be difficult for him to pay the amount in one lump and requested for instalment facility. This has been opposed by the counsel for the respondents,

as according to him, the amount is overdue for the last more than three years. Be that as it may, taking into account the over all facts of the case, I am inclined to direct that the petitioner may remit the balance amount of Rs.21,343/- in six equal monthly instalments. The first instalment shall be payable on or before 1st of October 2007. The balance five instalments will also be paid without default on the 1st of each succeeding month thereafter. On payment of the amount as above, the telephone connection shall be restored to the petitioner without fastening him any liability for the rental charges for the period subsequent to the disconnection of the telephone.

With the above directions, the writ petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp